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18  
19 **UNITED STATES DISTRICT COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

21  
22 ELVH, INC., a California corporation,

23 Plaintiff,

24 vs.

25 KELLY VAN HELEN, an individual,

26 Defendant.

Case No. CV 13-7524 MWF (PJWx)

**JOINT RULE 26(f) REPORT**

Case filed: October 10, 2013  
Trial date: None Set

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1           A.     **Statement of the Case:** Plaintiff alleges that Defendant's use of the  
 2 trademark and service mark Kelly Van Halen for apparel, furniture and assorted  
 3 services is confusingly similar to and dilutes Plaintiff's famous mark Van Halen.  
 4 Defendant denies she has infringed any trademark of Plaintiff and denies that there  
 5 is any evidence of consumer confusion between Defendant's trademark and any  
 6 trademark owned by Plaintiff. Defendant further denies that any trademark of  
 7 Plaintiff is famous or that Defendant's rightful use of her trademark in any way  
 8 tarnishes or blurs any mark owned by Plaintiff.

9           B.     **Subject Matter Jurisdiction:** Jurisdiction of the Court is invoked  
 10 under 28 USC §1121 and §1338(a) as an action arising under Acts of Congress  
 11 relating to trademarks, namely, the Lanham Act, 15 USC §1051 *et seq.* This Court  
 12 has pendent jurisdiction over claims arising under state law pursuant to 28 USC  
 13 §1338(b) and 28 §USC 1367(a).

14           C.     **Legal Issues:** Whether the trademark Van Halen is famous as defined  
 15 by 15 U.S.C. §1125 *et seq.* Whether the use of Kelly Van Halen on clothing,  
 16 blankets, furniture, interior design and construction services is confusingly similar to  
 17 Van Halen for clothing and all forms of entertainment related services and products;  
 18 whether the use of Kelly Van Halen as a trademark and service mark dilutes through  
 19 blurring the mark Van Halen.

20           D.     **Parties, Evidence, etc.:** Parties: ELVH, Inc. an intellectual property  
 21 holding company, without subsidiaries, that holds the rights to the Van Halen brand;  
 22 Kelly Van Halen, owner of the trademarks KVH and Kelly Van Halen; Percipient  
 23 Witnesses Plaintiff: Edward Van Halen, Alex Van Halen, Tracy Taub, Michael  
 24 Karlin, Matthew Bruck, Bruce Fingeret; Percipient Witnesses Defendant: Kelly  
 25 Van Halen, Baron Rogers; Key documents: trademark registrations, trademark  
 26 applications, articles and other media, business records.

27           E.     **Damages:** Plaintiff assumes minimal monetary damages based on the  
 28 lack of Defendant's sales, but seeks a permanent injunction requiring Defendant to

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1 adopt a new mark that is not confusingly similar nor dilutes the Van Halen brand.  
 2 Defendant asserts that Plaintiff has suffered no damage as there is no consumer  
 3 confusion between Plaintiff's trademarks and Defendant's trademarks. Defendant  
 4 also asserts that Plaintiff's trademarks are not famous, and even if they were,  
 5 Defendant's use of her trademark does not tarnish or blur Plaintiff's trademark.

6 F. **Insurance**: Defendant does not possess an applicable insurance policy.

7 G. **Motions**: Plaintiff does not foresee adding parties, nor claims;

8 H. **Manual For Complex Litigation**: (4<sup>th</sup> 2004) Use of Surveys §11.493

9 I. **Status of Discovery**: Discovery has not yet begun.

10 J. **Discovery Plan Items J through M**: Please see Appendix A.

11 M. **Dispositive motions**: None at this time.

12 N. **Settlement/ADR**: The parties have discussed settlement, but no  
 13 agreement yet. Defendant is interested in mediation before the Magistrate Judge,  
 14 but lacks resources to pay for ADR services from a private mediator.

15 O. **Trial Estimate**: 3 days; Plaintiff estimates calling six witnesses.  
 16 Defendant estimates calling 3-5 witnesses.

17 P. **Trial Counsel**: Plaintiff: Jeffrey R Cohen, Michael Culver and  
 18 Jennifer McGrath; Defendant: Daniel C. DeCarlo and Robert M. Collins.

19 Q. **Independent Expert/Master**: Not Applicable.

20 R. **Timetable**: Please See Appendix A. Plaintiff believes the time it  
 21 identifies in its Appendix A submission properly follows Judge Fitzgerald's "weeks  
 22 Before Trial" model as well as addresses experienced pretrial and trial practice. The  
 23 Defendant's actions or inactions and lack of funds should not be the reason why  
 24 Plaintiff is denied the opportunity to properly prepare for trial.

25 Opposing counsel's comment about a prior pending matter at the Patent and  
 26 Trademark office is incorrect. Current counsel for Defendant is not, and has never  
 27 been, Defendant's counsel in connection with that matter. Moreover, the entire  
 28 issue of dilution was not substantively addressed during this pending administrative

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1 proceeding. Finally, if you review Defendant's timeline you will notice in their rush  
 2 to truncate the timeframe they have not followed your honor's "Weeks Before Trial"  
 3 model let alone fully thought through the interplay of certain dates: the Expert  
 4 Discovery Cut-Off Date (9/30/2014) and Last Day to Hear Motions (10/20/14). No  
 5 briefing schedule and hearing date would work within this timeframe. Defendant's  
 6 suggested Last Day To Conduct Settlement Conference (10/20/14) and For Jury  
 7 Trial To File Memorandum of Contentions of Fact and Law (11/17/14) is not even  
 8 close to the required 12 weeks and 6 weeks in advance of trial. Defendant does not  
 9 agree with the timetable provided by Plaintiff. There are a number of reasons to set  
 10 a trial promptly and Defendant proposes doing such by the end of the year. Such a  
 11 schedule will provide both parties with more than sufficient time to develop  
 12 whatever discovery is needed. It should be appreciated that Plaintiff has virtually  
 13 endless resources while the Defendant has limited resources. Extending the case  
 14 unnecessarily taxes those already limited resources. Second, a significant amount of  
 15 discovery was conducted in the cancellation proceeding Plaintiff instituted with the  
 16 United States Patent and Trademark Office, so both parties have already had a head  
 17 start on relevant discovery. Third, the Defendant operates a small business and seeks  
 18 only to be able to use her own name as a trademark in association with that business.  
 19 Unfortunately, this lawsuit serves as a significant distraction not only to the  
 20 Defendant's ability to operate her business using her own name as her trademark  
 21 but distracts her potential customers as well. A simple Google search of KELLY  
 22 VAN HALEN unfortunately results in at least the first two items being about this  
 23 lawsuit. That will likely not end until this issue is adjudicated. Finally the issues  
 24 and factual questions are not complex and do not require extensive discovery. In  
 25 sum, the questions for the jury are whether the use of KELLY VAN HALEN for  
 26 certain kinds of apparel products will confuse consumers with the rock band VAN  
 27 HALEN. The jury will also be asked to consider whether the mark VAN HALEN is  
 28 famous and if so, whether the Defendant's use of her own name as a trademark will

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1 somehow tarnish or blur the alleged distinctiveness of Plaintiff's mark. Again, these  
2 are not difficult or complex questions to submit for consideration and we would  
3 urge the court to not allow this case to linger to the Defendant's great disadvantage.

4 S. Other Issue: None at this time.

5  
6 DATED: March 7, 2014

KINSELLA WEITZMAN ISER  
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8  
9 By: /s/ Jennifer J. McGrath  
10 Jennifer J. McGrath  
11 Attorneys for Plaintiff ELVH, INC.

12 DATED: March 7, 2014

13 LEWIS BRISBOIS BISGAARD & SMITH  
14 LLP

15  
16 By: /s/ Daniel C. DeCarlo  
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18 Attorneys for Defendant Kelly Van Halen  
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